

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

NATIONAL RIFLE ASSOCIATION)
OF AMERICA,)
)
Plaintiff,) CASE NO. 1:18-CV-566
)
vs.)
)
ANDREW CUOMO, both individually)
and in his official capacity,)
et al.,)
)
Defendants.)
)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HON. CHRISTIAN F. HUMMEL
WEDNESDAY, MARCH 13, 2019
ALBANY, NEW YORK

FOR THE PLAINTIFF:

Brewer Attorneys & Counselors
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FOR THE DEFENDANTS:

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THERESA J. CASAL, RPR, CRR, CSR
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UNITED STATES DISTRICT COURT - NDNY

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1 (Court commenced at 11:01 AM.)

2 THE CLERK: The case is National Rifle Association
3 of America versus Cuomo, et al., docket number 18-CV-566.
4 Appearances for the record, please.

5 MS. GASE: Good morning, your Honor. My name is
6 Stephanie Gase, with Brewer Attorneys & Counselors, on
7 behalf of the NRA.

8 THE COURT: Good morning, Ms. Gase.

9 MR. ALICEA: Good morning, your Honor. Jose Joel
10 Alicea, from Cooper & Kirk, on behalf of plaintiff, National
11 Rifle Association.

12 THE COURT: Good morning, Mr. Alicea.

13 MR. SCOTT: Good morning, your Honor. William
14 Scott, New York State Office of the Attorney General, on
15 behalf of the defendants.

16 THE COURT: Good morning, Mr. Scott.

17 MR. SCOTT: Good morning.

18 THE COURT: All right. The Court scheduled oral
19 argument with respect to this matter. This is a Notice of
20 Motion -- actually an Order to Show Cause, which was filed
21 by the plaintiff, seeking expedited discovery with respect
22 to a number of matters. That Order to Show Cause is docket
23 number 21.

24 Docket number 28 is a response which was filed by
25 the defendants in this matter and during the course of that

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1 response, particularly at part three, Mr. Scott had raised
2 an objection to the deposition of the defendant Maria T.
3 Vullo upon the grounds that she was a high-ranking
4 government official and is, therefore, not subject to being
5 deposed.

6 Docket number 60 is a reply which was filed on
7 November 26th of 2018 on behalf of the plaintiff, and at
8 part C of that Memorandum of Law and response, the issue of
9 the deposition of Ms. Vullo was addressed.

10 Ms. Gase, I don't know if I should address this to
11 you or Mr. Alicea --

12 MS. GASE: I'll be arguing, your Honor.

13 THE COURT: All right. Let me ask you just a
14 preliminary question, then I would be happy to hear from
15 you. It would appear to me there are two issues here: One
16 is whether or not at the time of the incidents and
17 occurrences set forth in the complaint, whether or not
18 Ms. Vullo was a high-ranking official; and then number two,
19 depending on what your response is, whether or not there is
20 someone else who can provide the testimony which you seek
21 from Ms. Vullo.

22 So I guess preliminarily, Ms. Gase, is it your
23 position that at the time of the incidents set forth in the
24 complaint she was or was not a high-ranking official?

25 MS. GASE: Your Honor, at the time of the

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1 incidents set forth in the complaint, I don't think we are
2 contesting that she would qualify as a high-ranking
3 official.

4 THE COURT: I didn't sense you were, Counsel, but
5 I wanted to make sure the record was complete. Go ahead,
6 Ms. Gase, what would you like to tell me.

7 MS. GASE: We certainly are contesting whether she
8 is a high-ranking official now and whether the same standard
9 applies to her as she is no longer a high-ranking official.

10 THE COURT: Okay. Why don't you tell me, why
11 don't you address that issue, and then address the issue
12 which is of greater importance to the Court as to whether or
13 not this information can be obtained from someone else.

14 MS. GASE: Sure, your Honor. To the extent Your
15 Honor is not aware, starting earlier this year, Ms. Vullo is
16 no longer with the Department of Financial Services.

17 THE COURT: Right.

18 MS. GASE: Now, the purpose of this kind of
19 limited immunity from deposition testimony is to ensure that
20 these high-ranking officials have the necessary time to
21 dedicate to their official duties and that they have greater
22 responsibilities and more limited time constraints than
23 other individuals who we sought to depose. So the Courts in
24 the Southern District and Eastern District, and though we
25 have not found in the Northern District, have not always

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1 applied this kind of immunity standard with respect to
2 people who are former government officials. In particular,
3 in the case of Universal Calvary Church versus the City of
4 New York, which is 1999 WL 350852, with a pin cite at
5 page 3, out of the Southern District of New York, in 1999.
6 In that case, the Court ruled the Martin test simply does
7 not apply to former officials. And Sanstrom versus Rosa,
8 1996 WL 469589, with a pin cite at 5, out of the Southern
9 District of New York, the Court in particular even allowed
10 the deposition against the former Governor Cuomo because the
11 test wouldn't apply because he was a former Governor and not
12 an acting Governor. Similarly, in 2006 in Toussie versus
13 County of Suffolk, 2006 WL 1982687, with a pin cite at 2,
14 out of the Eastern District of New York, the Court similarly
15 ruled that that test just does not apply.

16 However, here, regardless of whether you don't
17 apply the test or you do apply the test, we are still
18 entitled to the deposition of Ms. Vullo.

19 THE COURT: Tell me why.

20 MS. GASE: She has unique firsthand knowledge
21 related to our claims. First going back to the time we even
22 filed the complaint, it was clear she signed two of the
23 consent orders that are at the heart of the litigation, she
24 made statements in press releases that were intended to
25 threaten and get financial institutions and insurers under

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1 her authority to stop doing business with the NRA. The same
2 statements that she made were statements that the Court
3 relied on in its motion to dismiss -- or its decision on the
4 motion to dismiss to maintain the NRA's claims with respect
5 to the First Amendment claim.

6 Additionally, your Honor, she was the author of
7 the April 2018 letters that were sent to every financial
8 institution and insurer under the authority of the
9 Department of Financial Institutions. Your Honor, that's
10 just what we knew about at the time of the complaint. We
11 since have found out more than that. So to date, in
12 January, the only productions that have been done in this
13 case was exactly 95 documents. Almost 20 percent of those
14 documents are correspondence solely from Ms. Vullo to people
15 outside of the Department of Financial Services, with not a
16 single other person in the Department of Financial Services
17 on that correspondence. And it is all correspondence
18 showing that Ms. Vullo was specifically involved in the
19 conspiracy -- pardon me, not conspiracy, the censorship
20 campaign against the NRA.

21 And your Honor, while we certainly did not include
22 this in our original motion, as we didn't receive the
23 production until January, I brought one example of that
24 correspondence that not only shows what Ms. Vullo was doing,
25 but that shows that she has verbal conversations about

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1 the exact topics and issues that are part of the NRA's
2 complaints and allegations. And to the extent that
3 Ms. Vullo is having individual conversations by herself with
4 people trying to get them to stop doing business with the
5 NRA --

6 THE COURT: You acknowledge these conversations
7 were with people outside of DFS?

8 MS. GASE: Absolutely, your Honor. Would you like
9 to see the example I brought?

10 THE COURT: Sure. Mr. Scott, were you provided
11 with a copy?

12 MR. SCOTT: Just now, yes.

13 MS. GASE: So this was one of the documents that
14 defendants produced to us in January of this year to -- an
15 email from Ms. Vullo to Dave Jones in the Insurance
16 Department in the State of California, and there she is
17 specifically attaching various documents, the Lockton and
18 Chubb consent orders that are at issue in this
19 investigation. In particular, if you go to the third
20 sentence, you can see that she is talking about that she's
21 having -- or the email shows that she's having discussions
22 with Mr. Jones related to investigation of the Carry Guard
23 program, which is part of our selective enforcement
24 allegations that the only and sole reason that that
25 investigation is being conducted is because of the NRA's

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1 political views with respect to the Second Amendment.

2 So, your Honor, to the extent Ms. Vullo is having
3 individual personal communications, there's no one else we
4 can ask about who she's talking to and what she's doing and
5 her reasons behind those communications. To go and try to
6 have communications -- to instead go and depose all of these
7 other individuals, like Mr. Jones, who is part of the
8 Insurance Department in California, or other high-ranking
9 public officials out of state that she is urging to go after
10 the NRA, it's simply something that we'll be arguing in
11 front of those officials as well, why they're high-ranking
12 officials that shouldn't be deposed, but this is in
13 particular in relation to her actions and what she is doing.
14 A high-ranking government official should not be able to
15 hide behind their position to preclude deposition testimony
16 regarding her specific actions and the steps that she took
17 to violate the NRA's constitutional rights. This is not a
18 case where she's being deposed because of her position, your
19 Honor; this is a case she is being deposed because of what
20 she does and she has unique personal knowledge regarding her
21 own actions and the justification for those actions.

22 THE COURT: All right. Mr. Scott, let me ask you
23 the same preliminary question. There doesn't seem to be any
24 dispute that at the time of the incident set forth in the
25 complaint that Ms. Vullo was a high-ranking official.

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1 Ms. Gase argues that a separate standard or different
2 standard applies now that she's no longer in that position.
3 What's your response to that argument?

4 MR. SCOTT: First of all, we do agree that she was
5 obviously a high-ranking official at the time, but we
6 disagree that the standard does not apply for two reasons:
7 First of all, the general purpose behind the standard isn't
8 just to present the interference with that officer's
9 day-to-day operations.

10 THE COURT: But that's certainly part of the
11 consideration.

12 MR. SCOTT: Yes, yes, it is.

13 THE COURT: And you have to concede she is no
14 longer in that position.

15 MR. SCOTT: That's correct.

16 THE COURT: Okay.

17 MR. SCOTT: But the rule does exist to try to
18 protect their former status as an executive official and to
19 protect their thought processes and communications in that
20 regard. And in our case, in our opposition brief, we cite
21 to the case of RIE v. Gardner, which dealt with -- out of
22 the Southern District as well, in 2011, where the plaintiff
23 sought to depose the former Commissioner for the Department
24 of Labor and that request was denied applying the Martin
25 standard. So the standard still applies even though she is

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1 no longer the Commissioner.

2 And then you do have to look to the second factor
3 of does she have unique information that can only be
4 obtained from her, and the plaintiffs haven't made the
5 necessary showing in this.

6 THE COURT: Let me ask you a question. Ms. Gase
7 argues that Ms. Vullo engaged, for example, in conversations
8 with people involved in the Insurance Department in the
9 State of California. How else would they garner information
10 regarding the subject of those conversations?

11 MR. SCOTT: The extent of those conversations,
12 your Honor, are only to the extent, even in this email, of
13 providing the consent orders. And we can look to the RIE
14 case again on this issue. The Court in that case said that
15 plaintiff's contention that no one can testify as to why
16 Miss Smith signed the determination order, if sincere, is
17 simplistic and naive. And they went on to deny the request
18 and depose that former Commissioner.

19 THE COURT: So I guess to go back to my question,
20 how would you propose they explore these issues which are
21 central to their claim that there was some conspiracy to or
22 attempt to censor the NRA?

23 MR. SCOTT: I think there has to be at least some
24 initial effort to get that information from somebody else.

25 THE COURT: All right. Who would you propose they

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1 attempt to get it from?

2 MR. SCOTT: They have their -- we've submitted
3 affidavits from the head of investigations of DFS, we've
4 submitted affidavits from the General Counsel. There are
5 certainly other people from the DFS that they can start with
6 before they get to --

7 THE COURT: My sense is if they attempted to
8 depose people from the investigative services, you're gonna
9 raise a privilege argument.

10 MR. SCOTT: Well, and that goes to another point
11 that we have in this case. We have both a 12(c) motion
12 pending as to the equal protection claim, which may limit
13 the amount of discovery and may negate the ability to
14 inquire into this, and we also have a protective order
15 pending where if Ms. Vullo is proceeding in her
16 investigatory capacity, there may be privileges associated
17 with that.

18 THE COURT: Isn't your argument somewhat circular
19 then. You say they should go to people in their
20 investigative department rather than Ms. Vullo to get this
21 information. When they go to depose the people from your
22 investigative department, you're going to say they can't do
23 that because of the investigative privilege.

24 MR. SCOTT: Well, they may not be able to obtain
25 the information at all.

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1 THE COURT: Well, how are they supposed to proceed
2 with their litigation if they're not entitled to conduct
3 discovery?

4 MR. SCOTT: Well, our position is that the equal
5 protection claim should be dismissed in any event, so it
6 shouldn't proceed to discovery.

7 THE COURT: But it has not happened at this point.
8 So how would you propose they proceed with discovery if they
9 can't depose Ms. Vullo and they can't depose your
10 investigative people?

11 MR. SCOTT: Assuming discovery goes forward in
12 this case and they are able -- again, depending on the
13 Court's ruling on the protective order -- if they're able to
14 inquire as to those conflicts, they should start with the
15 investigation folks. If the Court says that that is a claim
16 that is going to proceed forward and they have the ability
17 to inquire into that, the first stop is not Ms. Vullo, the
18 first stop is other people involved in the investigation.

19 THE COURT: And when they go to the investigation
20 department, you're gonna argue that the investigative
21 privilege applies and they're not entitled to question those
22 people.

23 MR. SCOTT: Well, we argued that and the Court
24 ruled on it.

25 THE COURT: Assuming for purposes of discussion

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1 the Court agrees with you, aren't we back where we started?

2 MR. SCOTT: Well, then the same privilege would
3 apply to Ms. Vullo to the extent that, again, if she's
4 discussing the investigation and what's going on with that,
5 the same privilege would attach to her.

6 THE COURT: So your position is they're not
7 entitled to conduct discovery with respect to this issue
8 because she's a high-ranking official and there are a
9 variety of privileges available.

10 MR. SCOTT: As we've outlined in our motion for a
11 protective order.

12 THE COURT: Then how would you suggest they
13 proceed with their litigation?

14 MR. SCOTT: My suggestion would be they not
15 proceed as to these claims, again because they're not
16 appropriate and they don't have a right to be free from
17 investigation into their criminal acts and they certainly
18 haven't identified that they've been treated differently
19 than anyone else who committed similar criminal acts.

20 THE COURT: That sort of avoids the point. How
21 would you suggest they garner information in support of
22 their claim?

23 MR. SCOTT: Again, I think it would depend on the
24 Court's ruling as to the pending motion. If the Court
25 denies that motion and says there is no investigative

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1 privilege as to the NRA investigation, then we would start
2 with the people who were investigating it, why they did what
3 they did, whom they communicated with and why they
4 communicated with them. And if that testimony yields we can
5 only get this information from Ms. Vullo, then the issue can
6 be addressed at that point in time. But they have the
7 burden now to demonstrate that they have hit all of those
8 marks already, not that they might be hit at some point in
9 the future.

10 THE COURT: I guess my concern is, Mr. Scott, so
11 assuming I grant your motion with respect to the issue of
12 the investigatory privilege, and just assuming that for
13 purposes of discussion, aren't we back here again?

14 MR. SCOTT: Again, not necessarily, because we
15 haven't done -- there hasn't been any other discovery in
16 this case. There haven't been interrogatories served by the
17 plaintiff.

18 THE COURT: Again, my question is: Who do you
19 suggest they send the interrogatories to to be responded to?

20 MR. SCOTT: Well, I think if we are dealing with
21 the issue of interrogatories, that may deal with a different
22 question with Ms. Vullo, that is a less invasive and
23 potentially more narrow discovery device that they could use
24 in this case as compared to an open-ended deposition to, as
25 they say, talk about what she said and what she did.

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1 THE COURT: So your proposal is they would send
2 interrogatories to Ms. Vullo and assuming you don't have any
3 number of objections, they would get those back and then
4 determine if they need to depose Ms. Vullo?

5 MR. SCOTT: I think the interrogatories may narrow
6 that issue down.

7 THE COURT: Ms. Gase, what's your response to
8 that?

9 MS. GASE: Your Honor, we believe we've already
10 made the showing that Ms. Vullo has unique personal
11 knowledge.

12 THE COURT: Ms. Gase, I understand that's your
13 position, but my question was assuming -- as the Court has
14 not made a determination as yet with respect to that issue,
15 what is your objection, if any, to his suggestion that you
16 proceed by way of interrogatory, then, if necessary, come
17 back to conduct a deposition? And before you respond, all
18 of this discovery can be held in abeyance pending a decision
19 by Judge McAvoy on the motion to dismiss because you don't
20 know if DFS will be a party, so --

21 MS. GASE: Well, your Honor, just to be clear, no
22 matter what happens on the motion to dismiss, Ms. Vullo will
23 still be a party --

24 THE COURT: I understand that.

25 MS. GASE: -- and she is a party because of our

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1 First Amendment claims regarding retaliation.

2 THE COURT: I guess what I'm trying to convey to
3 you is if you want to proceed with Ms. Vullo's deposition
4 before you get a decision from Judge McAvoy, you can do
5 that, but you're not getting a second bite of the apple if
6 he rules in your favor on that motion. I want you to
7 understand that we are not bringing the same witness back
8 twice if I determine you can depose her.

9 MS. GASE: No, we absolutely understand that, your
10 Honor. It was our understanding that any type of stay of
11 discovery with respect to the equal protection claim was
12 already denied.

13 THE COURT: Right.

14 MS. GASE: Discovery is supposed to be going
15 forward on the equal protection.

16 THE COURT: I understand that. But I want you to
17 understand that if you depose Ms. Vullo -- for purposes of
18 discussion, if I determine you can depose her and Judge
19 McAvoy denies their motion, again for purposes of
20 discussion, you're not bringing Ms. Vullo back to conduct a
21 second deposition, that was sort of my point.

22 MS. GASE: And I absolutely understand that and I
23 guess I want to clarify that we have every intention -- it's
24 not our understanding that we can't depose Ms. Vullo right
25 now on both issues, 'cause there's been no stay as to asking

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1 her about the equal protection issues.

2 THE COURT: We are getting somewhat far afield
3 because I haven't determined whether you can depose her, but
4 I'm somewhat perplexed as to the validity of deposing
5 someone on that issue pending a decision on the motion.
6 Let's go back to my interrogatory question. Why are
7 interrogatories not a way to preliminarily proceed and see
8 if you can get this information from Ms. Vullo without the
9 need for a deposition?

10 MS. GASE: Because, your Honor, the type of
11 questions and discovery we need with respect to her
12 deposition aren't of the type we anticipate being able to
13 get through an interrogatory response. So, for example,
14 trying to get a full-fledged discussion of the -- of what
15 she said with respect to the Insurance Department of
16 California with regard to the NRA's Carry Guard program, a
17 tit-for-tat or a he-said-she-said is not what we really
18 anticipate ever being able to get from an interrogatory
19 response. Typically, in fact, when you ask someone to
20 describe in detail a conversation in an interrogatory
21 response, the response comes back and says we're not gonna
22 do that, that's the type of thing you would get in
23 deposition testimony. And there is no one else we are going
24 to be able to get to find out what Ms. Vullo said to these
25 individuals when she's the only person in those meetings.

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1 We can't get that from the head of investigations, we can't
2 get that from the General Counsel of DFS, we can only get
3 that from her and why she said it, what her thought process
4 was behind why she is going to these other governmental
5 agencies and telling them you guys need to go after the NRA,
6 you guys need to do various actions and steps regarding the
7 NRA. And that kind of detail is not what we're gonna get
8 from an interrogatory. Don't get me wrong, we absolutely do
9 intend to propound interrogatories with respect to the
10 defendants in this litigation. Part of the reason why we
11 withheld on that is because we want to get some of the
12 issues resolved that's in the motion to compel currently and
13 get some of the documents prior to that. But there's no
14 reason to hold off on a decision when there is sufficient
15 evidence right now to show that Ms. Vullo has unique
16 personal knowledge. And we're not sitting here today and
17 gonna say that, you know, we need a deposition of her
18 tomorrow. We would like to get some documents after Your
19 Honor responds on the motion to compel, but there's also no
20 reason to continue to push down an issue that has been fully
21 briefed and that can be decided right now based on the few
22 documents that the parties have already produced in this
23 litigation and the public documents that are available
24 showing Ms. Vullo is making public statements and is going
25 and having individual discussions as part of this censorship

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1 retaliation claim, the First Amendment claim that will
2 survive regardless of any decision on the motion to dismiss.

3 THE COURT: All right, Mr. Scott, what else do you
4 want to tell me?

5 MR. SCOTT: Just one thing I should note, your
6 Honor, that in the context of this equal protection claim,
7 the allegation isn't as to what the State of California did
8 to enforce or didn't enforce. The question is what happened
9 at DFS. So even in this context of wanting to get into
10 discussions with other governmental agencies doesn't really
11 further that claim.

12 Secondly, the cases we point out several times in
13 our papers hinges upon the baseless allegations of back room
14 dealings and financial institutions cutting off business
15 with the NRA. I assume that before the guidance letters
16 were issued, the NRA knows who they did business with, I
17 assume after they were issued who stopped doing business
18 with them, and that they could inquire of them if they had
19 communications with Ms. Vullo to point to that claim. So it
20 points out again there are other ways to try to get this
21 information other than going directly to the superintendent
22 of DFS.

23 THE COURT: Anything else you want to tell me,
24 Mr. Scott?

25 MR. SCOTT: No, your Honor.

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1 MS. GASE: The only other comment I have is
2 focusing on this equal protection claim, they do support her
3 censorship campaign claim that Ms. Vullo is going out there
4 and affirmatively trying to get other companies, the other
5 governmental agencies to censor the NRA, that is the
6 substance and basis of our First Amendment claim that is
7 going to proceed, that has survived a motion to dismiss
8 because of those exact allegations.

9 THE COURT: All right. We are gonna take a
10 recess, a ten-minute recess so I can speak to my law clerks
11 and see if I have any additional questions for you. I am
12 gonna reserve decision on this matter. Initially, I was
13 going to try to issue a decision from the bench, but I don't
14 think I can do that today. I would like to see my law
15 clerks.

16 MR. SCOTT: Thank you, your Honor.

17 (Short recess taken at 11:25 AM.)

18 (Court reconvened at 11:36 AM.)

19 THE COURT: All right. Please be seated.

20 Ms. Gase, let me ask you a question. For example,
21 if we go back and look at this email which you gave to me,
22 which is dated August 7th of 2018, apparently directed to
23 Dave Jones, who is someone in the Insurance Department in
24 the State of California, why can't you garner information
25 regarding what transpired in that transaction from Mr. Jones

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1 as opposed to Ms. Vullo?

2 MS. GASE: Well, again, so Ms. Vullo has had these
3 conversations not only with Mr. Jones --

4 THE COURT: I just used him as an example.

5 MS. GASE: -- yes, so with dozens of other people.
6 It's my understanding that she's talking to other heads
7 of -- Commissioners.

8 THE COURT: Okay. So your concern is if you go to
9 California and you seek to depose Mr. Jones, he is gonna
10 raise the same --

11 MS. GASE: Absolutely, your Honor, and he --

12 THE COURT: -- California privilege?

13 MS. GASE: And he has a whole heck of a lot less
14 of involvement, direct involvement, than Ms. Vullo does.

15 THE COURT: All right. I guess, Mr. Scott, my
16 question to you is I remain concerned about how they're to
17 proceed with their litigation if I tell 'em they can't
18 depose Ms. Vullo, when they go to talk to your counsel's
19 office, you're gonna raise the attorney/client privilege,
20 and when they go to talk to your investigators, you're gonna
21 raise the investigation privilege. How are they capable of
22 doing discovery?

23 MR. SCOTT: Well, again, your Honor, I think one
24 of the problems that maybe the Court's facing and I'm facing
25 in trying to answer this is we're trying to guess what those

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1 questions are gonna be in a vacuum, which is why I brought
2 up the question of interrogatories, that that may be a way
3 of dealing with this issue. We will know whether or not the
4 questions are something that we're going to be asserting a
5 privilege for or that they're an appropriate, less intrusive
6 means to deal with the case.

7 THE COURT: I guess, Mr. Scott, my concern is, and
8 I agree with Ms. Gase, certainly these questions are not
9 appropriate for interrogatories. If I want to know what
10 transpired in the conversation between Mr. Jones and
11 Ms. Vullo, that's traditionally something you pursue at a
12 deposition, not through an interrogatory. So, the other
13 thing is they're limited to the number of interrogatories
14 they can ask. My understanding is when they depose a
15 witness under the Federal Rules, they're entitled to seven
16 hours. The number of interrogatories is severely limited.
17 So they're not exactly equal discovery tools.

18 MR. SCOTT: Well, but, again, the case law sets
19 forth that there does have to be those initial steps. If
20 the interrogatories prove to be insufficient and that there
21 is further information as appropriate to be the subject of a
22 deposition, that would be the issue raised at that time, but
23 you don't get there until they make those efforts.

24 THE COURT: So they're gonna serve their -- and I
25 believe it's 26 interrogatories --

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1 MR. SCOTT: Twenty-six or 25, I think.

2 THE COURT: -- whatever the number is under the
3 Federal Rules, they clearly can't explore or gain all the
4 information they want, so aren't we just sort of delaying
5 this discussion?

6 MR. SCOTT: I don't think so, your Honor, because
7 I think some of this is going to be questions of, again,
8 what discussions, if any, occurred because if we're talking
9 about discussions that occurred with other financial
10 institutions, other people, there may be answers where there
11 were no discussions. If we're talking about what the
12 communication was with California, again, to a certain
13 extent, I don't even know that that's a relevant inquiry
14 because we don't govern what California does or doesn't do
15 by way of regulation.

16 THE COURT: I understand that, but depending on
17 what was said by Ms. Vullo in the course of that
18 conversation, it could be supportive of their theory that an
19 effort was made by the Governor and Ms. Vullo to censor the
20 NRA. I don't know whether it is or is not, but absent some
21 knowledge as to that conversation, it's sort of hard to
22 know.

23 MR. SCOTT: Except I would say that this email
24 that they produced in this context somewhat speaks for
25 itself, so to the extent that their question is, well, what

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1 does this email say and what does it mean, it just indicates
2 that they're being provided with these consent orders and
3 there really, frankly, isn't that much more to it.

4 THE COURT: I read the letter a little more
5 broadly than you do. It says the attached letters on a
6 different topic that I discussed with your GC yesterday,
7 which I assume is General Counsel, the NRA's Carry Guard
8 program, I know you're looking at it, but please let me know
9 if you want any further information from us. The attachment
10 also included two consent orders. I assume Ms. Gase would
11 like to know what the subject of the conversation was
12 between Ms. Vullo and the GC.

13 MR. SCOTT: I think that would go to Your Honor's
14 first question to her then, why not ask the GC as compared
15 to Ms. Vullo, because, again, that isn't necessarily a
16 high-ranking government official.

17 THE COURT: It's also someone in California.

18 MR. SCOTT: Understood. But they have a case
19 where they're making these allegations as to other states
20 being involved in these claims. That's the case they've
21 presented.

22 THE COURT: The essence of their case is Governor
23 Cuomo and Ms. Vullo allegedly started this process, not the
24 State of California.

25 MR. SCOTT: Well, they're apparently making an

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1 allegation that somehow they're interfering with --
2 encouraging California to investigate, so they are raising
3 that specter. But, again, if they want to know what the GC
4 was told, there is a nonhigh-ranking government official
5 mentioned in that email that can be inquired of that.

6 THE COURT: Of course, the GC may be considered a
7 high-ranking official in California --

8 MR. SCOTT: I don't know, your Honor.

9 THE COURT: -- and then we're back here again.
10 Anything else you want to tell me, Mr. Scott?

11 MR. SCOTT: Not at this time, your Honor.

12 THE COURT: Ms. Gase, would you like the last
13 word?

14 MS. GASE: My final comment would be the initial
15 steps that the defendants keep referring to, that's not a
16 requirement before you can get a deposition of a
17 high-ranking official who has unique personal knowledge and
18 who was personally involved in the claims at issue. That's
19 not something that you have to go out and do X, Y and Z
20 before this issue gets raised before the Court.

21 THE COURT: I think the essence of Mr. Scott's
22 argument is that you can get this information from someone
23 else, it's not unique to her but can be garnered from
24 someone else. I understand that's not your position, but
25 pretty clearly their position.

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1 All right. We will get you folks a decision
2 before the end of the month. Thank you for coming in. Have
3 a good day.

4 MR. SCOTT: Thank you, Judge, you, too.

5 (This matter adjourned at 11:43 AM.)

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THERESA J. CASAL, RPR, CRR
UNITED STATES DISTRICT COURT - NDNY

1 CERTIFICATION OF OFFICIAL REPORTER
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4 I, THERESA J. CASAL, RPR, CRR, CSR, Official
5 Realtime Court Reporter, in and for the United States
6 District Court for the Northern District of New York, do
7 hereby certify that pursuant to Section 753, Title 28,
8 United States Code, that the foregoing is a true and correct
9 transcript of the stenographically reported proceedings held
10 in the above-entitled matter and that the transcript page
11 format is in conformance with the regulations of the
12 Judicial Conference of the United States.

13
14 Dated this 19th day of March, 2019.

15
16 /s/ THERESA J. CASAL

17 THERESA J. CASAL, RPR, CRR, CSR

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